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No. 88-1558

IN THE

Supreme Court of the United States

October Term 1988

JACOBO ARMENTA,

Plaintiff-Appellee,

vs

HELEN LITTLE ARAGON, individually and as Personal Representative of the Estate of Maria S. Gonzales, Deceased.

Defendant-Appellant.

MOTION TO DISMISS

NARCISO GARCIA, JR.
810 Charleston, N.E.
Albuquerque, New Mexico 87110
(505) 265-5010

Counsel for Plaintiff / Appellee

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JACOBO ARMENTA,

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vs.

HELEN LITTLE ARAGON, individually and as Personal Representative of the Estate of Maria S. Gonzales, Deceased.

Defendant-Appellant.

ON APPEAL FROM THE SUPREME COURT OF NEW MEXICO

MOTION TO DISMISS

Jacobo Armenta hereby moves this Honorable Court to dismiss the appeal of Helen Little Aragon from the final decision of the Supreme Court of New Mexico. Armenta contends the appeal is not within this Court's jurisdiction and does not present a substantial federal question.

OPINION BELOW

The Decision of the Supreme Court of New Mexico is not published in the New Mexico Reports or the Pacific Reporter. The Decision appears as Appendix A to Appellant's Jurisdictional Statement.

JURISDICTION

Appellant invokes the jurisdiction of this Court under 28 U.S.C. 1254(2). Appellee challenges the Jurisdictional Statement.

STATEMENT OF THE CASE

Aragon challenges the provision of Section 45-3-804, N.M.S.A., (1978 Comp.) which allows the filing of claims with the district court as being violative of due process under the Fourteenth Amendment to the United States Constitution. Section 45-3-804, N.M.S.A., (1978 Comp.) provides in part:

> "Claims against a decedent's estate may be presented as follows:
>
> A. the claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed, or he may file a written statement of the claim with the district court. The claim is presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the district court."

Aragon contends the filing of claims with the district court violates due process because she, as personal representative, had not been served with notice and because the heirs to the estate have not been served with notice.

Jacobo Armenta's claim is based upon his agreement with his aunt (Maria Gonzales) and uncle (Tomas Gonzales) that Armenta would take care of them while living and that they would leave him one-half of their estate. The other one-half of the estate was to be left to his cousin, Helen Little Aragon, the Appellant here. Wills were executed by both on July 19, 1978, whereby Tomas and Maria bequeathed their estate to the surviving spouse and named Armenta and Aragon residuary beneficiaries if Tomas or Maria failed to survive each other. After Tomas' death on December 15, 1981, his will was

probated by the filing of a certificate of death and the will with the county clerk's office. On June 2, 1982, Maria executed another will bequeathing the entire estate to Helen Little Aragon and naming her personal representative. Armenta was not aware of the existence of the second will until after probate of Maria's estate was commenced. Maria passed away on January 3, 1983, and on January 31, 1983, Helen Little Aragon was appointed personal representative pursuant to the probate petition she filed. On February 18 and 25, 1983, Aragon published a notice to creditors. A copy of the Affidavit of Publication is provided herewith as Appendix 1. The notice states in part:

> Claims must be presented either to the undersigned personal representative at 232 Conchas N.E., Albuquerque, New Mexico 87123, or filed with the District Court of Bernalillo County, county courthouse, Albuquerque, New Mexico 87102.
>
> Dated: 2/10/83
>
> /s/
> Helen Little Aragon

Even though she was aware of Armenta's claim to one-half the estate she did not serve Armenta with notice. Armenta became aware of the publication and timely filed his claim on April 5, 1983, in the district court pursuant to the published notice.

Additionally, on May 3, 1983, Armenta filed a civil suit against Aragon both in her individual capacity and as personal representative of the estate of Maria Gonzales. The history of that case is discussed in the New Mexico Supreme Court Decision which is Appendix A to the Jurisdictional Statement.

It was not until October 8, 1986, that Aragon mailed a Notice of Disallowance to Armenta. Aragon failed to comply with the sixty (60) day time limit imposed by Section 45-3-804

(C) and Section 45-3-806 (A), N.M.S.A. (1978 Comp.). Due to the statutory allowance of the claim Armenta's motion for judgment on the pleadings was granted. The Judgment was upheld on appeal to the New Mexico Supreme Court.

ARGUMENT

I The Appeal is not within this Court's Jurisdiction

Aragon presents two questions on appeal. The first is whether a due process violation occurred when the personal representative of Maria's estate was not personally notified of Armenta's claim. This question was addressed and decided by the New Mexico Supreme Court. The second question is whether the personal representative's failure to object to the claim is valid as to the heirs of the estate. This question was not addressed and decided by the New Mexico Supreme Court.

Aragon contends the second question was raised and decided on her appeal to the New Mexico Supreme Court. A review of the Decision reveals no such issue being decided by New Mexico's highest court. Because the New Mexico Supreme Court did not pass on such issue this part of the appeal is not within this Court's jurisdiction under 28 U.S.C. Section 1257(2). *Peralta v. Heights Medical Center, Inc.*, 485 U.S. ——, ——, n.4, 108 S.Ct. 896, 898, n.4, 99 L.Ed 2d 75, 80, n.4 (1988); *Miss. Power & Light v. Miss. Ex. Rel Moore*, 108 S.Ct. 2428, 2437 n.10, 101 L.Ed 2d 322 (1988). *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 2321, 76 L.Ed 2d 527 (1983).

Aragon's attempt to raise the rights of the heirs to the estate is also not within this Court's jurisdiction to the extent she is attempting to raise the rights of third parties. One cannot invoke appellate jurisdiction of United States Supreme Court to vindicate rights of third parties. *Hanson v.*

Denckla, 357 U.S. 235, 2 L.Ed 2d 1283, 78 S.Ct. 1228 (1958). Maria's second will bequeathed the entire estate to Helen Little Aragon. She appears to be the only heir to the estate. Any other heirs have not been identified and her appeal on behalf of any other heir is not within this court's jurisdiction under 28 U.S.C. Section 1257(2).

Additionally, Aragon's appeal is taken in her capacity as personal representative of the estate of Maria Gonzales. The Notice of Appeal does not designate the capacity in which she appeals. However, the only capacity in which she was a party to the probate proceeding was that of personal representative. Thus, her appeal can only be in her status as personal representative. As personal representative she does not suffer any deprivation under the New Mexico Supreme Court Decision nor is the Decision personal to her as personal representative. To confer this Court with jurisdiction she must show that enforcement of the Decision will deprive her, as distinguished from others, of some right arising under the constitution. *Liberty Warehouse Co. v. Burley Tobacco Growers' Cooperative Marketing Assoc.*, 276 U.S. 71, 72 L.Ed 473, 48 S.Ct. 291 (1928). The party raising the question of constitutionality and invoking the jurisdiction of the Supreme Court must be interested in, and affected adversely by the decision of the state court sustaining the act, and her interest must be of a personal, and not of an official nature. *Braxton County Court v. West Virginia*, 208 U.S. 192, 52 L.Ed 450, 28 S.Ct. 275 (1908). The right of Aragon is limited to an inquiry whether the statute is so applied as to deprive her as personal representative of property without due process of law. *Castillo v. McConnico*, 168 U.S. 674, 42 L.Ed 622, 18 S.Ct. 229 (1898).

Thus, Aragon's appeal is not within this Court's jurisdiction under 28 U.S.C. Section 1257(2) in that (1) the second question raised by her was not decided by New Mexico's highest court; (2) Aragon may not raise the rights of third

parties; (3) and because Aragon, as personal representative, is not affected adversely by the decision.

II. The Appeal Does not Present a Substantial Federal Question

A. Appellant's Argument on Behalf of the Heirs is Not Personal to Her. Appellant's Argument as Personal Representative Is of an *Official* Nature.

Aragon contends the questions are substantial because "the heirs' rights to the assets of an estate after administration are protected from an invalid claim for fifty-percent (50%) of the estate" and that "an executor's duties and obligations to administer the estate for the benefit of the heirs and other claimants is protected by due process from a state statute that allows an invalid claim without notice to the executor". Jurisdictional Statement, p. 5-6.

The heirs rights to the assets of the estate have not been argued to the New Mexico Supreme Court and have not been addressed by such court. Armenta has challenged the attempt to argue the heirs rights under the jurisdictional challenge. Aragon next argues that as personal representative she has duties and obligations to administer the estate and that these duties and obligations are protected by due process. The Fourteenth Amendment provision upon which Aragon relies states: "nor shall any state deprive any person of life, liberty, or property without due process of law". The duties and obligations of Aragon as personal representative are not property rights protected under the due process clause.

B. Notice to The Personal Representative Through a Procedure Instituted by Her Was Reasonable.

On April 5, 1983, Armenta filed his claim with the district court clerk. The trial court had jurisdiction to allow the claim against the estate, where the claim was filed in the district

court after the personal representative published notice. *Matter of Estate of Bergman*, 107 N.M. 574, 761 P.2d 452 (Ct.App. 1988).

Armenta contends Aragon has not raised a substantial federal question in that the procedure initiated by the personal representative was followed by Armenta and the filing of the claim with the district court clerk was reasonable.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated. under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections." *Tulsa Professional Collection Services, Inc. v. Joanne Pope, Executrix*, 485 U.S. ____; 99 L.Ed 2d 565; 108 S.Ct. ____ (1988). *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314, 94 L.Ed 865, 70 S.Ct. 652 (1950). To meet the requirements of due process, the notice must be reasonable and adequate for the purpose, due regard being had to the nature of the proceedings and the character of the rights which may be affected by it. *Dohany v. Rogers*, 281 U.S. 362, 74 L.Ed 904, 50 S.Ct. 249; *Missouri ex rel. Hurwitz v. North*, 271 U.S. 40, 70 L.Ed 818, 46 S.Ct. 384 (1926); *Standard Oil Co. v. Missouri*, 224 U.S. 270, 56 L.Ed 760, 32 S.Ct. (1912). Due process does not guarantee or prescribe any particular form of notice; the notice required will vary with the circumstances and conditions. *Walker v. City of Hutchinson*, 352 U.S. 112, 1 L.Ed 2d 178, 77 S.Ct. 200 (1956). Actual personal notice is not necessary in all proceedings. There may be, and must be, some form of constructive or substituted service. *Jacob v. Roberts*, 223 U.S. 261, 56 L.Ed 429, 32 S.Ct. 303 (1912); *Ballard v. Hunter*, 204 U.S. 241, 51 L.Ed 461, 27 S.Ct. 261 (1907).

New Mexico's "nonclaim statute" being challenged by Appellant is derived from Section 3-804 of the Uniform Probate Code which provides in part:

> Claims against a decedent's estate may be presented as follows:
>
> (1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court.

Uniform Probate Code, Section 3-804, 8 U.L.A. 361 (1983).

The personal representative has the duty to investigate each claim and to use reasonable care in determining whether to allow or disallow it. Basic Probate in New Mexico, Bozarth, et al. (1988) p. 72. Failure to act on a claim has the effect of allowing the claim. Section 45-3-806 (A).

Here, Aragon published notice that claims were to be presented to her or filed in the district court. This procedure was followed by Armenta. Aragon failed to review the court file after the expiration of the filing deadline. Judgment on the pleadings was entered due to her neglect. She now complains that the procedure she initiated violated her due process rights. Under the circumstances of this case filing the claim with the district court was reasonable.

CONCLUSION

For the foregoing reasons, Armenta prays that the appeal be dismissed.

Respectfully submitted,

GARCIA LAW FIRM
810 Charleston N.E.
Albuquerque, New Mexico 87110
(505) 265-5010

By: _____
NARCISO GARCIA, JR.
Attorney for Plaintiff-Appellee

April 10, 1989

APPENDIX 1

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
IN THE DISTRICT COURT
PB. 83-008

IN THE MATTER OF THE ESTATE OF MARIA S. GONZALES, deceased.

NOTICE TO CREDITORS

NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative of this estate. All persons having claims against this estate are required to present their claims within two months after the date of the first publication of this Notice or the claims will be forever barred. Claims must be presented either to the undersigned personal representative at 232 Conchas, N.E., Albuquerque, New Mexico 87123, or filed with the District Court of Bernalillo County, County Courthouse, Albuquerque, New Mexico 87102.

DATED 2/10/83

/s/ Helen Little Aragon
HELEN LITTLE ARAGON
232 Conchas, N.E.
Albuquerque, New Mexico 87123
PERSONAL REPRESENTATIVE

SPANN, LATIMER & HOLLOWWA
By: Charles C. Spann
914 First Interstate Bank Building
P.O. Box 1031
Albuquerque, New Mexico 87103
Telephone (505) 243-3525
HCS Feb. 18, 25, 1983

Health City Sun

Office: 900 Park Ave., S.W. - Dial 242-3010
Mail Address: P. O. Box 1517
Albuquerque, New Mexico 87103

State of New Mexico }
County of Bernalillo } ss.

Joan L. Crawford, being duly sworn declares and says she is the publisher of the Health City Sun, a weekly newspaper published and having a general paid circulation in the city of Albuquerque, County of Bernalillo, and State of New Mexico; that the said Health City Sun was entered in the post office at Albuquerque as second class mail matter on September 5, 1930, and has met all requirements of a legal newspaper under the laws of the State of New Mexico.

Affiant further states that this newspaper is duly qualified to publish Legal Notices or advertisements within the meaning of Section 14-11-4 of the New Mexico Statutes annotated (1978).

Affiant further states that the publication, a copy of which is hereto attached, was published in said paper in the regular and entire issue of each number of the paper, during the period and time of publication, and that the notice was published in the news paper proper and not in a supplement thereof for 2 weeks, the first publication being on the 18th day of February, 1983, and the last publication being in the issue of the 25th day of February, 1983.

Affiant further states that the costs of publishing said legal notice have been paid, or have been assessed as court costs in the case numbered.

Joan L. Crawford

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 25th day of February, 1983.

Notary Public

My Commission expires 11/16/83